Supreme Court, U.S.
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NO. 89-653

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

JULIUS JONES,

vs.

JOHN GAGLIARDI,

Appellant/Petitioner

vs.

AMERICAN TELEPHONE & TELEGRAPH; BELL OF PENNSYLVANIA; A T & T TECHNOLOGIES; REED, SMITH, SHAW & MCCLAY; JUDGES ROBERT DOYLE & EMIL NARICK; PUC; PENNSYLVANIA DEPARTMENT OF JUSTICE; TITUS, MARCUS & SHAPIRO; DILWORTH, PAXON, KALISH & KAUFMANN; JUDGE DONALD ZIEGLER; MANSMANN, CINDERICH & TITUS; DUQUESNE LIGHT COMPANY; ALLEGHENY COUNTY SHERIFF'S DEPARTMENT; RICHARD THORNBURGH,

Appellees/Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

John Gagliardi, Pro Se
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Clairton, PA 15025

87pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the lower federal courts erred in granting sanctions pursuant to F.R.C.P. No. 11 in the form of injunctive relief against filing any related civil action, based upon the filing of a state court complaint designed to join additional defendants, crippling the pro se party's ability to defend in a remanded state court action?

2. Whether the lower federal court erred in refusing to disqualify itself, when there is a lengthy history of tainted court rulings by the Judge's colleagues and the defendants include a judicial colleague and members of the U.S. Attorney's Office?

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Third Circuit. See Rules of the Supreme Court No. 21.1(b).

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Appellees/Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner John Gagliardi respectfully prays that a writ of certiorari issue to review the Judgment Order of the United States

Court of Appeals for the Third Circuit entered in this case on June 21, 1989 and the Order denying rehearing, dated July 20, 1989.

OPINIONS BELOW

On November 23, 1988, the Honorable Gerald J. Weber, District Judge, United States District Court for the Western District of Pennsylvania, entered an Order and Memorandum in this matter. (Appendix, p. A-11). Without hearing, the court granted the third party defendants' Motion to Dismiss the Third Party Complaint and struck the complaint with prejudice for failure to state a cause of action upon which relief could be granted and other grounds. The court denied the Appellant/ Petitioner Gagliardi's Motion for leave to amend the complaint without giving any reasons, and remanded the action between the Plaintiff, Julius Jones, and Gagliardi to the Court of Common Pleas of Allegheny County, Pennsylvania. The court retained jurisdiction to decide on a

Motion by Third Party Defendants for Sanctions and Injunctive Relief.

On December 14, 1988, Judge Weber issued an Order granting Third Party Defendants' Motion for Sanctions and Injunctive Relief (Appendix, p. A-7). Plaintiff Jones and Appellant/Petitioner Gagliardi and their representatives were permanently enjoined from filing any civil action against any and all of the Third Party Defendants relating to any of the subject matter of the lawsuit. It further ordered the Clerk of the U.S. District Court not to accept for filing any action by Jones or Gagliardi except upon approval of a member of the court.

Upon appeal by Gagliardi and Jones of these orders, the United States Court of Appeals for the Third Circuit, consisting of a panel of Circuit Judges Stapleton, Greenberg, and Scirica, by Judgment Order (Appendix, p. A-3), without opinion, dated June 21, 1989, by the Honorable Judge Walter

K. Stapleton, affirmed the November 23, 1988 and December 14, 1988 orders of the District Court, and denied Appellant/Petitioner Gagliardi's Motion to recuse. By Order, by Judge Stapleton (Appendix, p. A-1), dated July 20, 1989, the United States Court of Appeals for the Third Circuit, en banc, denied the Appellant/Petitioner's Petition for Rehearing.

JURISDICTION

The Judgment Order of the United States Court of Appeals for the Third Circuit, in the Appendix at A-3, was entered on June 21, 1989. By Order, dated July 20, 1989, in the Appendix at A-1, Appellant's Petition for Rehearing was denied. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254 (1).

CONSTITUTIONAL AND PROCEDURAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT V.

--CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION, AMENDMENT XIV.

--CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICES: OFFICES; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. Section 455. Disqualification of justice, judge or magistrate.

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. Section 1651. Writs.

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jursidictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

Federal Rules of Civil Procedure No. 11. Signing of Pleadings, Motions and Other Papers; Sanctions.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when

otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by cooroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Pennsylvania Rules of Civil Procedure No. 2292(a). Right to Join Additional Defendants.

(a) In any action the defendant or any additional defendant may, as the joining party, join as an additional defendant any person whether or not a party to the action who may be alone liable or liable over to

him on the cause of action declared upon by the plaintiff or jointly or severally liable thereon with him, or who may be liable to the joining party on any cause of action which he may have against the joined party arising out of the transaction or occurrence or series of transactions or occurrences upon which the plaintiff's cause of action is based.

STATEMENT OF THE CASE

Julius Jones filed a complaint in the Court of Common Pleas of Allegheny County at GD 88-15310, naming petitioner John Gagliardi as a defendant. John Gagliardi then filed a third party complaint naming as defendants respondants American Telephone and Telegraph; Bell of Pennsylvania; A T & T Technologies; Reed, Smith, Shaw & McClay; Judges Robert Doyle and Emil Narick; U.S. Attorneys; PUC; Pennsylvania Department of Justice; Titus, Marcus and Shapira; Dilworth, Paxson, Kalish & Kaufmann; Judge Donald Ziegler; Mansmann, Cindrich & Titus; Duquesne Light Company; Allegheny County Sheriff's Department and Richard Thornburgh. On October 20, 1988, respondants United States District Court Judge Donald E. Ziegler and Attorney General Richard L. Thornburgh petitioned for removal of the civil action pursuant to Title 28, United States Code, Sections 1442, 1446(d) and 2408.

On October 27, 1988, Judge Ziegler and Attorney General Thornburgh filed a motion to dismiss the third party complaint. The motion sought dismissal, with prejudice, on the following grounds: failure to state a claim; lack of personal jurisdiction due to improper service; res judicata and collateral estoppel; statute of limitations; absolute judicial immunity (Judge Ziegler); and sovereign immunity (United States Attorney's Office). Dismissal was also sought on the ground that the third party complaint was frivolous and malicious. On November 3, 1988, a consolidated motion to dimiss, re-asserting these bases for dismissal on behalf of all defendants, was filed by government counsel.

On November 15, 1988, Gagliardi filed a motion for leave to file an amended complaint, seeking to modify his pleadings to conform to federal pleading requirements, his first opportunity to act in federal court.

Government counsel also filed a motion for sanctions and injunctive relief against Julius Jones and John Gagliardi. The motion was filed on November 22, 1988; and, on the same date, the district court scheduled a hearing on the matter for December 14, 1988.

On November 23, 1988, the district court entered an order striking the third party complaint with prejudice, dismissing it as to each defendant with prejudice, denying Gagliardi's motion for leave to amend, remanding the action between Jones and Gagliardi to the Allegheny County Court of Common Pleas, and retaining jurisdiction with respect to the motion for sanctions. On December 2, 1988, Gagliardi filed a notice of appeal from this order to the U.S. Court of Appeals to the Third Circuit. (Appeal No. 88-3795).

On December 14, 1988, the district court held the scheduled hearing on the motion for sanctions. Appellants Jones and Gagliardi did not appear, although they did

file objections to the District Court's jurisdiction. Finding that Jones and Gagliardi had received notice of the hearing, the district court granted the motion for sanctions. The district court ordered, as a sanction, that Jones and Gagliardi and anyone acting on their behalf were "permanently enjoined from filing any civil action against any or all of the Third Party Defendants herein, which civil action relates to any aspect of the subject matter of this suit." The district court further ordered that the Clerk of Court not accept for filing any civil action submitted on behalf of or signed by Jones or Gagliardi without prior approval by a member of the court.

On December 15, 1988, the district court ordered that a pleading filed by Gagliardi be sealed. The document, "Objection to Jurisdiction of the Above Court," contained financial disclosure

statements of two judges who were not parties to the litigation.

On December 20, 1988, Gagliardi and Jones filed an amended notice of appeal from orders dated November 22, 1988, November 23, 1988, December 14, 1988 and December 15, 1988.

A summary of material facts behind the case are contained in the following paragraphs.

The factual background of the case is one which may shock many Americans and is one which has been vigorously covered up by many of the individuals involved in this case, particularly those individuals who are third party defendants. The effort of those third party defendants to drag John Gagliardi into Federal District Court and have an egregious sanctions order imposed to keep him out of court is part of the continuing cover up of past and ongoing misdeeds and must be considered and construed in that light.

Gagliardi, and U.S. Industrial Fabricators, Inc., was the primary warehousing contractor in Western Pennsylvania for Western Electric and the Bell system during the late 1970's. The business was lucrative and worked to the advantage of USI and AT&T. AT&T and Western Electric were later subjected to a consent decree involving affirmative action for the purpose of attempting to remedy past discrimination. As a result of the consent decree, Bell System had to allow for participation of minority contractors. The Bell System authorities had approached Gagliardi for the purpose of obtaining his help in arranging for a suitable minority contractor for rigging hoisting and hauling.

John Gagliardi arranged for Julius Jones, a Black minority member, to participate as the principal owner of a new company, Step-Van Services Co., for the purpose of obtaining such work from the Bell System. In detrimental reliance on the

assurances of business from Bell System, Jones left other employment for this venture and made Step-Van his full time occupation. Step-Van and Jones were given business by Bell Systems, and the work was handled to the satisfaction of the Bell System. For a time, it seemed that the relationship between Step-Van and Bell Systems would be long and successful.

Later, the whole thing fell apart. Gagliardi noticed that some of the Bell System employees were destroying new equipment, and that the equipment was being charged to the rate base eventually resulting in higher rates to the customers of Bell of Pennsylvania, another AT&T subsidiary. Gagliardi complained to the proper Bell System authorities, assuming that they would solve the problem. All they did was tell him to ignore the situation. It was after Gagliardi became convinced that the destruction of new equipment was sanctioned by the higher officials of the

Bell System that he decided that something needed to be done. It was at this point that John Gagliardi went to government authorities and the media with his story.

Bell System immediately ceased to do business with U.S. Industrial Fabricators, as a form of retaliation, and soon also ceased to do business with Step-Van Services as a result of the association between Julius Jones and John Gagliardi. Jones and his company were wiped out. Several lawsuits were filed, in one of which Gagliardi and U.S. Industrial Fabricators, Inc. settled their claims with the Bell System. Part of the settlement was a provision that Gagliardi would not refer to the other terms of the settlement or otherwise have anything to say about the Western Electric problems. Gagliardi's attorneys approved this settlement without advising him of the fact that the settlement agreement would have the possible effect of preventing Gagliardi from serving as a

witness for Julius Jones concerning the Step-Van Case. The attorneys involved in the settlement for Gagliardi, Jon Hogue and Dan Shapira, a former Assistant United States Attorney, have both been subsequently involved in the representation of the components of the Bell System, and have refused to represent Gagliardi in cases against the Bell System citing a conflict even though they had previously represented Gagliardi in a case against the Bell System even while Shapira also simultaneously represented the U.S. Attorney's office.

Jones and Gagliardi were bound by a verbal contract supported by good and sufficient consideration. Both the state court plaintiff and defendant agree to the existence of this contract. Faced with the imminent destruction of his business, Gagliardi accepted the profferred settlement from AT&T and Bell of Pa. in the amount of $500,000.

Jones sued Bell of PA and Western Electric in the Court of Common Pleas of Allegheny County docketed as G.D. 82-16123. Jones, presently 58 and a black man, alleged, inter alia, wrongful discrimination and unlawful restraint of trade by the defendants in that action. In an equitable suit, G.D. 84-19895, Judge Doyle held a hearing on Memorial Day, May 27, 1985, and also held a hearing on July 9, 1986 for a final decision which enjoined Gagliardi from aiding and abetting Jones. Incredibly, this was interpreted to prevent Gagliardi from testifying even if subpoenaed by Jones. Jones was thus deprived of the necessary testimony of John Gagliardi so that Step-Van could successfully recover damages for the wrongful actions of Western Electric, Bell of Pennsylvania, et al.

Steven B. Fulton of the Pittsburgh law firm of Reed, Smith, Shaw and McClay wrote in a letter to Julius Jones, dated May 28, 1987, about the existence of Gagliardi's

agreement, Julius Jones v. AT&T Technologies, Civil Action No. 87-9435 (U.S.D.C. W.D.Pa.), which letter was a direct violation of the settlement agreement.

After disclosure of this clandestine agreement between AT&T, et al., and Gagliardi, Jones initiated the underlying civil action against Gagliardi because of the letter and documents which violated the settlement agreement, that Julius Jones was unaware of until May 28, 1987.

In his complaint filed at GD 88-15310 (Allegheny County Court of Common Pleas), Jones alleged that he had certain Ninth Amendment rights and that "defendant, John Gagliardi, did impair Obligation of Contract with Plaintiff by improperly settling his case, improperly diverting opportunities, and improperly allowing personal property and documents to be removed from premises, thus Impairing Contract Obligations to Damage of Plaintiff, Julius Jones, herein."

Gagliardi, in turn, acting pro se filed a "Third Party Ninth Amendment Complaint at Law," naming respondants as defendants. Although inartfully drafted, this matter sought to join the parties to shift the blame from Gagliardi.

The allegations of the third party complaint are in relevant part, as follows:

> 8. That Third Party Defendants did interfere with the Obligation of Contract between Plaintiff, Julius Jones and Third Party Plaintiff, John Gagliardi. Bell System (prior to divestiture included AT&T, Western Electric Company, and Bell Telephone Company and its subsidiaries) did enter into a Settlement Agreement with Third Party Plaintiff, John Gagliardi to agree to a secrecy clause (prompted by Gagliardi's attorneys: Titus, Marcus & Shapira), which was upheld in Court by Judges Narick & Doyle; thus depriving Plaintiff, Jones, of a primary witness (and the only witness) to meetings with the Bell System representatives dealing with engaging Jones (as a minority) into business so as to comply with a Federal Consent Decree. Further, that Third Party Plaintiff, Gagliardi, by signing this Agreement, was not given the opportunity of bidding on any work for the Bell System, nor by association was Jones, Plaintiff, given the opportunity, therein depriving him of this Company, and a livelihood.

9. That Third Party Defendants, Reed, Smith, Shaw & McClay, a law firm, by their agents Ira Lefton and James McConony, represent AT&T Technologies (formerly Bell System), who have upheld the unconstitutional "Agreement", therein depriving Third Party Plaintiff, Gagliardi, from witnessing to Plaintiff, Jones, charges in a case now pending (GD 82-16123).

10. That Third Party Defendants, PUC, U.S. Attorneys, Pa. Dept. of Justice, the FBI, and other local, state and federal agencies were made aware of fraud and wasteful misconduct with the Bell System during 1977, and by their deliberate disregard, and refusal to allow a national investigation, confined the investigation to a local issue therein allowing Bell System to cover-up a scandal of such proportions as to cause "cash rebates" to consumers into the millions of dollars. (Exhibits I, J & K).

11. Third Party Defendant, Duquesne Light Company, because of ongoing litigation with Third Party Plaintiff, Gagliardi, did cause the Sheriff's Dept. of Allegheny County to enter the business premises of Gagliardi, and they did remove certain file cabinets with contents, (paperwork and documentation) being held in the care and custody of Gagliardi for Plaintiff, Jones. The whereabouts of these documents, etc. are unknown to Gagliardi, and their location is secret and secrecy is secured by a Preliminary Injunction dated 22nd day of October, 1987, signed by Judge I. Wekselman, restraining Gagliardi from speaking with anyone to determine the whereabouts. (Exhibit H) at 87-18359.

12. That Third Party Defendants, Titus Marcus & Shapira, did thru their attorneys, Jon Hogue and Dan Shapira, cause Defendant, Gagliardi, to enter into the Settlement Agreement with the Bell System at GD 80-13509, which contained a "secrecy" clause specifying that Defendant, Gagliardi, was not permitted to divulge the contents of said Agreement, and that this same Agreement precluded his, or his company from ever entering suit against the Bell System. However, at sometime subsequent, when Plaintiff, Jones, entered suit against the Bell System for denying him the right to bid, and genuinely believed that it was because of his minority standing, and that they, (Bell System), had only used him on a temporary bases to come into complaince with the Federal Consent Decree, and had put him out of business because of this association and working arrangement with Defendant, Gagliardi. Bell System attorneys mailed per contents to Jones a photocopy of the Settlement Agreement they had signed with Gagliardi, thus, making him (Jones) totally aware of contents.

Defendants Hogue and Shapira did not act to the Defendant, Gagliardi's best interests by denying him representation to safe guard his constitutional rights, and their actions by "ripple" action deprived Plaintiff, Jones, of his constitutional rights.

13. That Third Party Defendants, Dilworth, Paxson, Kalish & Kaufmann, by their attorneys, Robert P. Casey, Daniel Ryan & Alan J. Hoffman, did further uphold the "secrecy" clause and "Gag" order while they were representing Bell Telephone of Pennsylvania, therein

denying Defendant, Gagliardi, the ability to witness for Plaintiff, Jones, in the pending litigation.

14. That Third Party Defendants, Mansman, Cindrich & Titus by their attorneys, Paul Titus, John Hogue (formerly with Titus, Marcus & Shapira) and Robert Cindrich (former U.S. Attorney), representing AT&T did further uphold the "secrecy" clause to the Settlement Agreement, therein denying Defendant, Gagliardi, the ability to witness for Plaintiff, Jones, in the pending litigation.

15. That Third Party Defendants, Sheriffs Department of Allegheny County, Sheriff, Eugene Coon and Deputy Sheriff, Robert Cherep, did enter the premises of Defendant, Gagliardi, and did remove certain filing cabinets containing documents and other possessions belonging to Plaintiff, Jones. Despite argument and objection by Gagliardi, these items were removed on behalf of the Duquesne Light Company, and there whereabouts are unknown to this date because of the reasons previously stated regarding Judge Wekselman.

16. That Third Party Defendant, Judge Donald Ziegler, of the U.S. District Court for the Western District, did by Order of Court dated the 30th day of October, 1986 dismiss and close all cases pending by an ORDER of Civil Action 86-1998 (which was John Gagliardi v. Ted McWilliams, et al.), among these cases was 86-2293 which was Julius Jones, John Gagliardi vs. Robert A. Doyle, et al, which had just been filed the 29th day of October, 1986. How could Ziegler, (J) read the complaint the same day, and determine that "the

> instant case be and hereby is dismissed for failure to state a cause of action recognized under Federal Law, Federal R. Civ. P. 12(b)(6); IT IS FURTHER ORDERED that the Clerk of Courts for the United States District Court for the Western District of Pennsylvania be and hereby is enjoined from filing or causing to be filed any complaint or other papaer from John Gagliardi or any known associate of John Gagliardi without first forwarding said paper to this court and obtaining approval from the undersigned." (Exhibit L). This complaint 86-2293 had been filed Pro Per by Julius Jones and John Gagliardi, as co-Plaintiff.

On November 7, 1988, Gagliardi filed a motion for Judge Weber to recuse himself. Gagliardi outlined the Judge's personal relationship with defendant Zieglar and raised the question of an institutional conflict of interest with the U.S. Attorney's Office, in view of its assigned role in defending Western District Judges.

On November 15, 1988, Gagliardi filed a motion to amend his complaint, containing numerous exhibits outlining his course of treatment and conduct in the courts. The exhibits confirm many of the conflicts he encountered. Also included was a transcript

of a hearing before Judge Ziegler dated December 23, 1987. That transcript contained statements from Gagliardi again outlining the numerous conflicts of interest he had encountered. Judge Ziegler declined to impose an injunction at that time and recused himself from further proceedings.

Gagliardi had filed earlier complaints against these defendants directly in federal court. These were direct efforts to establish a cause of action and not an effort to join as additional defendants. Between August 6, 1986, and October 29, 1986, he filed in the district court seven complaints naming as defendants a total of 183 parties including former Governor of Pennsylvania, Richard Thornburgh, United States Attorney J. Alan Johnson, former United States Attorney Robert J. Cindrich, First Assistant United States Attorney Stephen I. Goldring, former Assistant United States Attorney Alexander Lindsay, and numerous private lawyers and private

citizens. Gagliardi's complaints generally charged the defendants with conspiring to violate his civil rights, including a conspiracy to cover up fraud in the telephone system.

On October 30, 1986, Judge Ziegler dismissed all of appellants' complaints on the ground that they failed to state claims upon which relief could be granted. The judge also entered an order enjoining the clerk of court "from filing or causing to be filed any complaint or other paper from John Gagliardi or any known associate of John Gagliardi without first forwarding said paper to this court and obtaining approval from the undersigned."

Gagliardi took various appeals, most of which ended unsuccessfully. However, in Gagliardi v. McWilliams, 834 F.2d 81, 83 (3d Cir. 1987), the Third Circuit vacated the injunctive sanction, finding that Gagliardi had not had adequate notice of the hearing

to determine what sanctions, if any, would be imposed against him.

Prior to the disposition of some of the appeals Gagliardi filed suit against Judge Ziegler and Catherine Martrano (Clerk of Court for the United States District Court for the Western District of Pennsylvania). In this action, he alleged that the order enjoining him from filing complaints without prior approval by the court violated his right to due process. Judge Ziegler dismissed this complaint in which he himself was a defendant on March 3, 1987 as redundant and vexatious. On July 30, 1987, the Third Circuit Court of Appeals issued a judgment order affirming the decision below without opinion.

On February 20, 1987, Julius C. Jones filed a complaint at Civil Action No. 87-435 (W.D. PA) naming as defendants, inter alia, AT&T Technologies, Inc.; Reed, Smith, Shaw & McClay; Titus, Marcus & Shapira and Bell Telephone of Pennsylvania. The complaint

alleged that defendants AT&T Technologies and Bell Telephone Company of Pennsylvania had wrongfully terminated a hauling contract with Jones on August 25, 1978; that defendant Titus, Marcus and Shapira had misrepresented his interest in negotiating a settlement agreement with AT&T and Bell in 1981; and that Reed, Smith, Shaw & McClay had violated the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Section 1961. On November 19, 1987, the district court (Teitelbaum, J.) entered an opinion and order dismissing this complaint. No appeal was taken.

In Gagliardi's objection to jurisdiction, opposing the instant motion for sanctions, he included references to Judge Teitelbaum's later discovered A T & T stockholdings. Other pleadings had demonstrated Judge Ziegler's bias which resulted in recusal following his damaging rulings.

REASON FOR GRANTING THIS WRIT

This petition for Writ of Certiorari should be granted. Pursuant to United States Supreme Court Rule 17, numerous grounds exist indicating that this Court should take active jurisdiction over this appeal.

The United States Court of Appeals for the Third Circuit has rendered a decision which is in conflict with other federal courts of appeals on the same matter. More particularly, the Third Circuit Court has here approved the imposition of Federal Rule of Civil Procedure 11 sanctions for the filing of pleadings in state court. This practice expressly is disapproved in other circuits. Further, the Court has approved injunctive relief, barring a party from filing any civil action against named defendants "which relates to any aspect of the subject matter of this lawsuit." (emphasis added). This overbroad injunction

which goes far beyond the rules of res judicata, cripple the party's ability to defend himself in an ongoing remanded state court action. This extraordinarily overbroad federal injunction, forcing the party to litigate in state court facing contempt charges if he dares to add jointly responsible parties to the action in order to attepmt to defend himself, is abusive. The Court of Appeals for the Third Circuit has sanctioned this abusive procedure. In doing so, they have so far departed from the accepted and usual course of judicial prodeedings, as to call for an exercise of the powers of supervision of the United States Supreme Court.

As noted in the preceding statement of the case, this matter has surfaced against a truly bizarre factual background. In the late 1970's, pro se defendant petitioner Gagliardi exposed a massive fraud against the ratepayers perpetrated by affiliates of American Telephone and Telegraph. In the

course of conducting a warehousing operation under contract with the system, Gagliardi learned that agents of the communications giant were routinely destroying large amounts of brand new cable by chopping the material into smaller pieces. This was done in furtherance of a fraudulant scheme which permitted the billing of large numbers of hours of labor for the claimed installation of the cable, which in fact was destroyed instead of installed. The thanks which Mr. Gagliardi received for exposing this massive waste and fraud, was the retaliatory cancellation of his contracts and destruction of his business.

Suits were filed. Eventually Mr. Gagliardi reached a settlement with the communications defendants. Although the destruction of his business cost him millions, he accepted a settlement of $500,000.00. The terms of the settlement provided, at the time, that the terms would remain confidential and that Mr. Gagliardi

would refrain from making statements or otherwise pursue the underlying events, releasing the defendants from all claims.

Mr. Gagliardi was a 49% shareholder in another company called Step-Van. The 51% shareholder was Julius Jones, a black man whose presence aided defendant Bell Telephone to comply with various government mandates to increase doing business with minority groups. Following Gagliardi's whistleblowing activities, business relations also ceased with Step-Van and Jones. Jones and Step-Van also filed suit. This suit failed. Astoundingly, the Pennsylvania state court's ruled that Gagliardi would not be permitted to testify as a witness in the case, despite subpoena. The state court's ruled that Gagliardi would be enjoined from "aiding and abetting" Jones, based upon the settlement agreement. This injunction was interpreted to mean that his testimony could not be given in the Jones case. In effect, the state courts

determined that Gagliardi's $500,000.00 settlement agreement was a form of lawful "hush" money that put his critical and damaging testimony outside the reach of other litigants who issued him process.

Gagliardi was struck a series of further blows. Key attorneys who represented him in the initial case against Bell, jumped sides and went to work for the communications defendants. They were unavailable to defend the early injunction and other actions. Gagliardi blamed them in part for not alerting him to the possibility that the settlement agreement they recommended he sign could somehow be interpreted to mean that he could not testify under oath as a witnessif subpoened. Gagliardi conferred repeatedly with every law enforcement agency with colorable jurisdiction. No one was interested in pursuing a substantial investigation. The interplay between the communications giants, public prosecutors and politics gradually

unfolded to Gagliardi over the years. Numerous ties were uncovered, as former prosecutors went to work for law firms involved in representing the conglomerates involved. A lead defense lawyer negotiating the original settlement, Bob Casey, is now the Governor of Pennsylvania. A former Governor, now head of the U.S. Justice Department, Richard Thornburgh, had been briefed personally by Gagliardi concerning the facts, but, as usual, no action resulted.

In complete frustration, Gagliardi sought help from the federal courts. In view of the numerous conflicts and incredible state court rulings, Gagliardi believed his Constitutional Rights, especially due process rights, had been violated. He sought to overturn the settlement agreement or at least that portion of the agreement prohibiting his testimony. He sought damages from those he believed had set him up, engaged in

conflicts, and failed to perform their public duties. Acting without counsel, several wide-ranging suits were filed.

The federal judges who had contact with Gagliardi in the Western District of Pennsylvania, the Pittsburgh area, gave him short shrift. His relations with the judiciary gave rise to yet another unfortunate subplot of this tale. Initially, the Honorable Donald Ziegler dismissed several actions for failing to state causes of action, and for containing conclusory allegations. Without providing notice of the proposed relief or an opportunity to defend, Judge Ziegler imposed and injunction against Gagliardi and prohibited the Western District Clerk from accepting any documents from him, his representatives, or known associates. Gagliardi sued Judge Ziegler. Pursuant to the injunction, the Clerk declined to accept the filing. Following review by Judge Ziegler it too was dismissed. Matters went

from bad to worse. Gagliardi complained of the Judge dismissing a case when he himself was a defendant. Representatives of the U.S. Attorney's Office came to Judge Ziegler's defense. Members of the office were defendants in the cases. Eventually, the Third Circuit Court of Appeals did vacate Judge Ziegler's injunction [See Gagliardi v. McWilliams, 834 F.2d 81 (3rd Cir. 1987)]. The appeals court required a modicum of procedural due process. Following a hearing, Judge Ziegler declined to reimpose the injunction and recused himself from other actions. However, his grant of the motion to dismiss the complaints continued to stand. A case involving Jones and Step-Van was handled and dismissed by the Honorable Hubert Tietlebaum. A review of his financial disclosure reports revealed substantial holding of stock in the defendant communications' companies. Gagliardi's matters were assigned to Judge William

Standish. His financial disclosure documents also revealed substantial holding of stock in the defendant communications' companies. Eventually he recused himself. Judge Paul Simmons recused himself without stating a reason. The instant matters found themselves before Judge Gerald Weber, who denied a motion to recuse, and imposed the sanctions here under review. Judge Weber has passed away during the pending of these appeals.

Following the initial round of federal court dismissals, which occurred on the pleadings and never resulted in hearing on the merits, Jones sued Gagliardi in state court. The gravamen of the action concerned Gagliardi's agreement to accept $500,000.00 and then apparently agree to be unable or unavailable to testify in other cases, as the agreement had been interpreted by state court judges. Gagliardi's acceptance of "hush" money and lack of testimony resulted in Jones' inability to prove his case

against the communications' defendants. Gagliardi, acting without counsel, sought to join the listed parties, essentially blaming them for his predicament. In this regard, Gagliardi filed the Third Party Complaint at issue in state court. The Pittsburgh U.S. Attorney's Office, acting on behalf of the federal defendants, removed the matter to the Western District. Here Judge Weber, citing the related earlier litigation, dismissed all third party defendants, imposed the injunctions at issue as a sanction, and remanded Jones and Gagliardi to state court to fight the issue out among only themselves. The court expressly declined to accept jurisdiction on the pendant state claims.

On December 14, 1988, the District Court, through Judge Weber, entered the following order:

> NOW, therefore, it is hereby ORDERED that the Motion for Sanctions and Injunctive Relief is hereby GRANTED.

> IT IS FURTHER ORDERED that Plaintiff, Julius Jones and Defendant, John Gagliardi, their representatives, agents, employees, servants and all persons acting in concert with them or in their behalf, are hereby permanently enjoined from filing any civil action against any or all of the Third Party Defendants herein, which civil action relates to any aspect of the subject matter of this lawsuit.
>
> IT IS FURTHER ORDERED that the Clerk of this Court is hereby directed not to accept for filing any civil actin filed by, on behalf of or signed by plaintiff Julius Jones or defendant John Gagliardi, execpt upon the approval of this Court. (emphasis added)

This injunction was entered pursuant to a request for sanction under Federal Rule of Civil Procedure 11 and the All Writs Act (28 U.S.C. 1651). F.R.C.P. No. 11 provides as follows, in relevant part:

> A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address.... The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not

> interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.... If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Of critical importance here is the fact that the "third party complaint" was filed by Gagliardi in state court. His subsequent pleadings consisted merely of a request to amend the pleading to conform to federal court requirements and an objection to the jurisdiction of the federal court opposing the sanction request. The request to amend the pleading was denied. The objection to federal court jurisdiction was ignored.

A pleading filed in state court is not subject to the Federal Rules of Civil Procedure at the time it is filed. Gagliardi's only obligation was to follow

state rules of procedure when he filed the "third party complaint" in state court. Accordingly, sanctions imposed underFederal Rule of Civil Procedure 11 are inappropriate.

This ruling by the Court of Appeals for the Third Circuit, approving the sanctions imposed by the District Court in the Western District of Pennsylvania, is directly in conflict with decisions of the Court of Appeals for the Fourth Circuit. The Fourth Circuit has ruled specifically and repeatedly that Rule 11 sanctions may not be imposed for filing and signing a state court complaint which is subsequently removed to federal court. See Kirby v. All. Bev. Corp, 811 F.2d 253 (4th Cir, 1987); Meadow Ltd. v. Meadow Farm, 816 F.2d 970 (4th Cir, 1987). At this time, no published cases at the Court of Appeals level have been uncovered to support the decision of the Third Circuit in this case. This Court is urged to grant the instant petition to

resolve this conflict between the Third Circuit and the Fourth Circuit.

Additionally, this Court is urged to grant the instant petition to provide the Courts in all the Circuits some much-needed guidance concerning the construction and use of the sanctions portion of F.R.C.P. No. 11. There appear no published cases from this Court outlining the standards and parameters of this Rule, since recent amendments have encouraged a widespread application. It is no surprise that Mr. Gagliardi finds himself in a position opposing the imposition of this rule. He is acting pro se, without counsel. He is battling powerful and wealthy corporate foes. He has been unable to get a hearing on the merits of his complaints. His suits and complaints, brought to obtain fair process in state court proceedings founded upon allegations of great public waste, often before Judges with stock holdings in the companies challenged, have greatly irked the local

judiciary. Studies have suggested that it is precisely this type of party, an individual desparately seeking to vindicate his rights for perceived injustice and harm by powerful opponents, who most likely is summarily sanctioned by the federal courts. These individuals fight an imbalanced battle in the courts. Their opposition can afford the highest-priced lawyers and unlimited review of technical precedent to bury the individual in paper. The odds are always against the individual in these settings and more than one just cause of action has met its demise because of the imbalance. Rule 11 sanctions add insult to the injury. Not only is the initial damage left unremedied, but the individual must also suffer the indignity and cost of sanction in his effort to vindicate his rights. It is time for the nation's highest Court to speak on this issue. It is time for the nation's highest Court to assure the citizens that they need not fear unreasonable punishment merely for

the act of seeking redress in the federal court. The essential and historical purpose of the federal courts has been to act as the great equalizer. Individuals crushed and ruined by the great powers in America must have at least one institution in which to take refuge and seek justice to maintain domestic stability. This Court is asked to issue an opinion reaffirming the great commitment to the ideal of justice and guarding against the use of this rule to practically deny access or chill the rights of litigants who are forced by circumstances to battle powerful foes.

Clearly, the district court's sanctions in this case went too far. As noted, the injunction prohibits filing any civil action regarding these defendants which "relates to any aspect of the subject matter of this lawsuit." The court appears to desire to give prospective relief to the parties to insure full benefit of the rules of res judicata and collateral estoppel. But this

ruling goes beyond necessity and unfairly impinges upon Gagliardi's constitutional rights to Due Process of Law. The lower court improperly assumed that virtually any filing relating to any aspect of the subject matter would be barred. But a review of the underlying doctrines of res judicata and collateral estoppel reveal that this is not the case.

For instance, Pennsylvania law, the law to be applied on this remand, contains several exceptions which are applicable directly to the instant fact pattern. Most importantly, Pennsylvania recognizes a distinction between the validity of an initial cause of action and a claim for contribution or indemnity. Different rules govern these different circumstances. The mere fact that a party has failed to plead an independent cause of action against a party does not generally prohibit that party from pleading a right to contribution among joint tortfeasor defendants. The

application of the doctrine of res judicata requires that there be an identity of the issues. Whether a party has stated a cause of action on a direct complaint does not raise the same issue as to whether or not that party has the right to joinder for purposes of allocating the contribution among joint tortfeasors. In similar circumstances, Pennsylvania Courts have held that the doctrine of res judicata did not bar a claim for contribution among joint tortfeasors when that precise issue had not been raised in the earlier proceeding. Diehl v. Fidelity-Philadelphia Trust Company, 164 Pa. Super. 524, 67 A.2d 592, (1949). Husak v. Berkel, Inc., 234 Pa. Super. 452, 341 A.2d 174, (1975).

Here, the district court's assumption that res judicata has barred all related litigation completely cripples Gagliardi's ability to establish his defense in state court. Under state rules, Gagliardi is entitled, on his remand, to join additional

defendants who might be liable over to him or jointly or severally liable to the plaintiff. Pa. R.C.P. No. 2252. However, should Mr. Gagliardi dare attempt to utilize this routine defensive procedure in the state court, he runs the risk of running afoul of the federal court injunction. Incredibly, he may actually be in contempt of the federal court should he make a move in his state defense later interpreted to "relate in any aspect to the subject matter" of the dismissed federal suits. The role of the federal courts should be to protect the due process rights of litigants, not to use the powerful coercive tools of the Court to insure that the due process protection involved in defending oneself are eliminated.

The opportunity of a party to defend oneself in court is guaranteed by the Due Process Clause to the United States Constitution. But further, the opportunity to defend must not be merely colorable or

illusory. Palko v. State of Connecticut, 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed 288 (1937) This federal court injunction denies Gagliardi the opportunity to use otherwise available state rules and procedures to defend himself. The denial of a key component of his defense, the right to put the blame on others, renders his opportunity to defend illusory and hence violative of Due Process guarantees.

The root problem is simply that the injunction is overbroad. It bars civil actions which "relates to any aspect of the subject matter of this lawsuit". But the doctrine of res judicata simply does not apply where there are distinct causes of action which, even though related, are not so closely related that matters essential to recovery in the second action have been determined in the first action. Killon v. Wright, 34 Pa. 91 (1859); Baldwin v. Rose Tree Fox Hunting Club, 451 Pa. 538, 304 A.2d 505 (1973). The lower court's

overbroad order takes no account of this distinction, to the detriment of the party's due process rights.

The order also would not allow a party to plead facts occurring subsequent to the initial pleading, if related to the subject matter of the dismissed suit. Clearly, subsequent facts giving rise to a cause of action generally are not barred by the doctrine of res judicata. Kilogar v. Colbert County Board of Education, 578 F.2d 1033 (11th Cir., 1978); Eichman v. Fotomat Corp., 759 F.2d 1434 (9th Cir., 1985).

The right of access to the courts is protected by both the Fifth and Fourteenth Amendment due process clauses. Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949); Cruz v. Beto, 405 U.S. 319, 92 S.Ct. 1079, 31 L.Ed. 263 (1972). This right is far too fundamental to permit an injunction to bar prospective access in all but the clearest circumstances. The current situation,

involving the need for Gagliardi to conduct an on-going defense in state court, does not fall within the known parameters of existing precedent and should not be permitted. This unwarranted and unprecedented expansion of the sanction power under F.R.C.P. No. 11 should be halted here and now.

The motion for sanctions also referred to 28 U.S.C. Section 1651, as an alternative jurisdictional ground for seeking the injunction relief. The preceding analysis, outlining the overbroad reaching into the ability of Gagliardi to defend himself in state court contrary to established Due Process guarantees, is hereby incorporated as equally applicable to this alternative basis for the sanction.

There is an additional reason why the lower court lacked jurisdiction to consider the sanction motion. Following the entry of the final order dismissing Gagliardi's Third Party Complaint, Gagliardi filed a Notice of Appeal to the Third Circuit (prior to the

hearing and Judge Weber's Order on the sanction motion). Generally, the filing of a Notice of Appeal divests the district court of jurisdiction over the case pending disposition of the appeal. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982); Venen v. Sweet, 758 F.2d 117 (3rd Cir. 1985). The Third Circuit has appeared to have misinterpreted the Rules of Appellate Procedure in the name of a misguided view of judicial economy.

A second major ground for granting this petition concerns the lower court's refusal to recuse himself from the case. At root, Mr. Gagliardi has only sought to obtain a federal determination as to whether the civil settlement agreement, and the manner in which it was entered into, can be utilized to avoid his subpoenaed testimony concerning widespread waste and fraud by AT&T, Bell Telephone and others. To date, he has been unable to obtain a hearing on

the merits of this basic question. Mr. Gagliardi has concluded that these massive corporate entities have been the beneficiaries of an official reluctance to examine seriously the underlying merits. Through outlined conflicts-of-interest and other means, such as substantial stock ownership, many of these officials in turn benefit in one way or another from the ability of these entities to sustain their profits. These issues are sufficiently serious to justify the appointment of a District Court Judge completely insulated from the appearance of conflict created in ruling on the activities of friends, close professional colleagues and institutions upon whom they depend daily.

Consider Mr. Gagliardi's experience in the Western District of Pennsylvania. He became embroiled with the Honorable Donald Ziegler. Judge Ziegler dismissed Gagliardi's cases and imposed an injunction upon future filings without notice or

opportunity for hearing. Judge Ziegler summarily dismissed a complaint where he himself was a defendant and sought the protection of his own injunction. In pleadings filed with the Court of Appeals for the Third Circuit, Judge Ziegler denied any prior knowledge of Gagliardi. But it was shown that Gagliardi had appeared as a witness before Judge Ziegler in one of the early state court cases establishing the original Bell Telephone fraud. Eventually the Third Circuit vacated the injunction, on notice grounds. Judge Ziegler, who has been defended in these proceedings by members of the U.S. Attorney's Office for the Western District, also defendants in the case, finally lifted the injunction and recused himself. Judge Standish of the District then was assigned matters for several months and also imposed sanctions on Gagliardi. However, his financial disclosure statements disclose that he owns substantial blocks of stock of several of the defendants. Judge

Tietlebaum, ruled on a related case involving Julius Jones, dismissing the complaint. His financial disclosure statements also reveal substantial blocks of stock of several of the defendants. In this setting, Judge Weber, a colleague of these members of the bench and a close friend of Judge Ziegler's, made the rulings at issue. (It is noted that Judge Weber has passed away pending appeals). An institutional conflict also emerged. The defendants include members of the U.S. Attorney's Office for the Western District. But this office also has the responsibility to enter appearances and defend the Judges of the Western District, including Judge Weber, from suits. In view of the extraordinary rulings, it is impossible for Gagliardi to believe he is getting a fair shake.

The motion for a recusal here under consideration is premised upon both Constitutional and statutory grounds. Due

Process guarantees insure a litigant the right to an impartial decision-maker, free even from the appearance of bias. Withrow v. Larkin, 421 U.S. 35, 95 S.Ct. 1456, 43L.Ed 2d 712 (1975). This standard has further been codified at 28 U.S.C. Section 455 which requires a judge's disqualifications "in any proceeding in which his impartiality might reasonably be questioned."

The U.S. Court of Appeals for the Third Circuit has also embraced the position that a judge should be disqualified if facts suggest merely the appearance of impropriety. Rapp v. Van Dusen, 350 F. 2d 806 (3d cir, 1965). An even more liberal standard was suggested by the opinion in United States v. Conforte, 624 F. 2d 869 (9th cir., 1980). The court in Conforte opined that if an attitude of judicial disapproval was somehow linked to a suspect motive such as racial bias or dangerous link such as financial interest, only the

slightest indication of appearance or fact of bias or prejudice from these sources would be sufficient to disqualify the judge. Pennsylvania case law expressly recognizes that a mere association can rise to the level of the appearance of impropriety necessitating disqualification. In Commonwealth ex rel Armor v. Armor, 398 A.2d 173 (Pa. Super. 1978) the Court vacated a ruling by a judge who was merely the colleague on the bench with another judge who was related to one of the litigants.

The U.S. Court of Appeals for the Tenth Circuit has recognized circumstances where judges should be disqualified because of a relationship whereby counsel for one of the parties was representing the Judge. Texaco, Inc. v. Chandler, 354 F. 2d 655 (10th cir., 1965). In the instant case, members of the U.S. Attorney's Office for the Western District effectively are continually on retainer to represent the Western District Judges. 28 U.S.C. Section 2679, 2680. It

is inappropriate for a judge to rule on the liability of personal colleagues from his bench and lawyers to whom he must look for his own defense.

The rulings entered by Judge Weber should be vacated due to the taint of the appearance of bias. Judge Weber has passed away since the time of his initial rulings. On remand, a Judge outside the Western District should be appointed.

It had been suggested that claims against these defendants should be given little consideration due to claims of judicial immunity and prosecutorial immunity. But these doctrines are not ironclad. This Court has ruled that declaratory and injunctive relief may be had against judges. Pulliam, Magistrate for the County of Culpepen, Virginia v. Allen, et al., 466 U.S. 522 (1984). Prosecutors may not be shielded from investigative or other non-court activity. Donovan v. Reinbold, 433 F. 2d 738 (9th cir., 1970).

A final word on the question of whether there exist sufficient allegations of bias to justify judicial disqualification may be found by referring to the opinion of Mr. Justice Frankfurter in Public Utilities Commission v. Pollak, 343 U.S. 451, 96 L. Ed. 1068, 72 S. Ct. 813 (1952):

> "[R]eason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment, or may not unfairly lead others to believe they are operating, judges recuse themselves. They do not sit in judgment. They do this for a variety of reasons. The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact."
> U.S. at 466-67, L.Ed. at 1079, S.Ct. at 813.

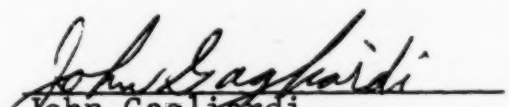
This matter should be remanded for a detailed review by a tribunal free from even the appearance of bias.

CONCLUSION

These important issues should be addressed by this Court. For the reasons stated above, a writ of certiorari should issue to the United States Court of Appeals for the Third Circuit so that this Honorable Court may review and correct the decisions below.

Respectfully submitted,

Oct 18/89



John Gagliardi
Appellee/Petitioner, Pro Se
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Clairton, Pa. 15025
(412) 233-0574

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 88-3795 and 88-3834

JULIUS JONES,

Appellant

vs.

JOHN GAGLIARDI,

Appellant

vs.

AMERICAN TELEPHONE & TELEGRAPH CO., et al.,

SUR PETITION FOR REHEARING

BEFORE; GIBBONS, Chief Judge,
HIGGINBOTHAM, SLOVITER,
BECKER, STAPLETON, GREENBERG,
HUTCHINSON, SCIRICA, COWEN,
and NYGAARD, Circuit Judges

The petition for rehearing filed by Appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the

decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition ~~for r~~rehearing is denied.

By the Court,

/s/Walter K. Stapleton
Circuit Judge

Dated: July 20, 1989

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 88-3795

JULIUS JONES

vs.

JOHN GAGLIARDI,

Appellant

vs.

AMERICAN TELEPHONE & TELEGRAPH;
BELL OF PENNSYLVANIA;
A T & T TECHNOLOGIES;
REED, SMITH, SHAW & McCLAY;
JUDGES ROBERT DOYLE & EMIL NARICK;
PUC; PA. DEPT. OF JUSTICE;
TITUS MARCUS & SHAPIRO;
DILWORTH, PAXON, KALISH & KAUFMANN;
JUDGE DONALD ZIEGLER;
MANSMANN, CINDERICH & TITUS;
DUQUESNE LIGHT COMPANY
ALLEGHENY COUNTY SHERIFF'S DEPARTMENT
RICHARD THORNBURG

NO. 88-3834

JULIUS JONES

vs.

JOHN GAGLIARDI,

vs.

JOHN GAGLIARDI,

vs.

AMERICAN TELEPHONE & TELEGRAPH;
BELL OF PENNSYLVANIA;
A T & T TECHNOLOGIES;
REED, SMITH, SHAW & MCCLAY;
JUDGES ROBERT DOYLE & EMIL NARICK;
PUC; PA. DEPT. OF JUSTICE;
TITUS MARCUS & SHAPIRO;
DILWORTH, PAXON, KALISH & KAUFMANN;
JUDGE DONALD ZIEGLER;
MANSMANN, CINDERICH & TITUS;
DUQUESNE LIGHT COMPANY
ALLEGHENY COUNTY SHERIFF'S DEPARTMENT
RICHARD THORNBURG

Julius Jones and
John Gagliardi,
Appellants

On Appeal From the United States District Court For The Western District of Pennsylvania (Pittsburgh) (D.C. Civil Action No. 88-2338)
District Judge: Honorable Gerald J. Weber

Submitted May 10, 1989

BEFORE: STAPLETON, GREENBURG, and SCIRICA, Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellants, it is

ORDERED AND ADJUDGED that:

1. Appellees' motion to file a supplementary appendix and to consolidate the appeals is granted.

2. Appellant Gagliardi's motion to recuse is denied because there is no basis for recusal.

3. The final judgment of the district court entered November 23, 1988 and its sanction order entered December 14, 1988 be and are hereby affirmed.

4. Costs are taxed against appellants.

By the Court,

/s/Walter K. Stapleton
Circuit Judge

ATTEST:

/s/Sally Mrvos
Clerk

Dated: June 21, 1989

Costs taxes in favor of appellee as follows:

Brief.....$226.50

Certified as a true copy and issued in lieu of a formal mandate on July 28, 1989.

Test: /s/ M. Elizabeth Ferguson
Chief Deputy Clerk, U.S. Court of Appeals for the Third Circuit

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

JULIUS JONES
Plaintiff

v.

JOHN GAGLIARDI,
Defendant and
Third Party Plaintiff

v. Civil Action No. 88-2338

AMERICAN TELEPHONE & TELEGRAPH
BELL OF PENNSYLVANIA
A T & T TECHNOLOGIES
REED, SMITH, SHAW & MCCLAY
JUDGES ROBERT DOYLE and
EMIL NARICK
U. S. ATTORNEYS
PUBLIC UTILITY COMMISSION
PA. DEPT. OF JUSTICE
TITUS, MARCUS & SHAPIRO;
DILWORTH, PAXON, KALISH &
KAUFMANN
JUDGE DONALD ZIEGLER
MANSMANN, CINDRICH & TITUS
DUQUESNE LIGHT COMPANY
ALLEGHENY COUNTY SHERIFF'S
DEPARTMENT
RICHARD THORNBURGH
Third Party Defendants

O R D E R

On November 22, 1988, the United States Attorney on behalf of all third party defendants in this action filed a Motion for Sanctions and Injunctive Relief against the

two respondents Julius Jones and John Gagliardi. We issued an Order that the respondents should appear before this Court on December 14, 1988, at 2 p.m. to show cause why the sanctions and injunctive relief should not be imposed. We ordered the United States Attorney to cause personal service of this Order to be made on said respondents. We are aware that the 2-respondents received copies of the notice of this hearing because of their telephone inquiries to the Chambers of this Court about said hearing and their filing of a motion to stay this hearing before this Court and with the United States Court of Appeals of the Third Circuit.

On December 14, 1988, at 2 p.m., the Court was called to order in Court Room 2, United States Courthouse, Pittsburgh, Pa., and neither respondent was present, nor was any representative on their behalf.

NOW, therefore, it is hereby ORDERED that the Motion for Sanctions and Injunctive Relief is hereby GRANTED.

IT IS FURTHER ORDERED that Plaintiff, Julius Jones and Defendant, John Gagliardi, their representatives, agents, employees, servants and all persons acting in concert with them or in their behalf, are hereby permanently enjoined from filing any civil action against any or all of the Third Party Defendants herein, which civil action relates to any aspect of the subject matter of this lawsuit.

IT IS FURTHER ORDERED that the Clerk of this Court is hereby directed not to accept for filing any civil action filed by, on behalf of or signed by plaintiff Julius Jones or defendant John Gagliardi, except upon the approval of a member of this Court.

The United States Attorney is DIRECTED to cause copies of this Order to be

served on said respondents Julius Jones and John Gagliardi.

SO ORDERED at Pittsburgh this 14th day of December, 1988 at 2:30 p.m.

/s/Gerald J. Weber
GERALD J. WEBER
United States District Court

cc: all parties of record

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

JULIUS JONES
Plaintiff

v.

JOHN GAGLIARDI,
Defendant and
Third Party Plaintiff

v. Civil Action No. 88-2338

AMERICAN TELEPHONE & TELEGRAPH
BELL OF PENNSYLVANIA
A T & T TECHNOLOGIES
REED, SMITH, SHAW & MCCLAY
JUDGES ROBERT DOYLE and
EMIL NARICK
U. S. ATTORNEYS
PUBLIC UTILITY COMMISSION
PA. DEPT. OF JUSTICE
TITUS, MARCUS & SHAPIRO;
DILWORTH, PAXON, KALISH &
KAUFMAN
JUDGE DONALD ZIEGLER
MANSMANN, CINDRICH & TITUS
DUQUESNE LIGHT COMPANY
ALLEGHENY COUNTY SHERIFF'S
DEPARTMENT,
RICHARD THORNBURGH
Third Party Defendants

MEMORANDUM AND ORDER

Jones sued Gagliardi in the Court of Common Pleas of Allegheny County, Pennsylvania. Defendant filed an Answer and Counterclaim, and filed a document entitled "Third Party Ninth Amendment Complaint at

Law." Third Party Plaintiff named as Third Party Defendants 16 parties, among them a judge of the United States District Court, two judges of the Court of Common Pleas of Allegheny County, the United States Attorney of the Western District of Pennsylvania, the Pennsylvania Department of Justice, the Pennsylvania Public Utility Commission, several law firms, several public utility firms, the Allegheny County Sheriff's Department and Attorney General Richard Thornburgh.

The United States Attorney for the Western District of Pennsylvania on behalf of the Defendants United States District Judge Ziegler, the United States Attorney's Office and Attorney General Thornburgh, filed a petition to remove the action to this United States District Court under 28 U.S.Code 1442 because federal officers were being sued for acts done in their official capacity.

All named Third Party Defendants have filed individual motions to dismiss and the United States Attorney has filed an omnibus motion to dismiss the entire third party complaint. The third party complaint is a rambling document to which are attached as "exhibits" a great number of documents which are not properly part of a complaint in this court. It appears that the Third Party Plaintiff is attempting to relitigate a series of prior actions brought in the Common Pleas Court and in this court growing out of the same subject matter.

We noted that in many of the prior actions filed by Gagliardi in this court he named a large number of defendants, many of whom are the same as the Third Party Defendants named in the present suit. In some of those actions Gagliardi is the sole plaintiff, in others Gagliardi and Jones (the original plaintiff in this action) are co-plaintiffs and in another Jones is the sole plaintiff. The present third party

complaint would not be allowed in a federal case because it is not a claim for contribution or indemnity, but rather a vouching in of third parties alleged to be directly liable, a practice permitted in the Pennsylvania courts. Under this situation the present action may very well be collusive between Jones and Gagliardi in an attempt to by-pass various decisions which would bar direct action against these multiple defendants. The prior cases in this court were dismissed for failure to state a cause of action. The present omnibus motion of the United States to dismiss contains a recital of the various grounds of the individual defendants which are in most respects similar.

We issued an Order on November 3, 1988 requiring the Third Party Plaintiff to respond to allegations of the Third Party Defendants by November 2, 1988. Because the grounds for dismissal are largely the same we required a response in a single document.

Instead of a response Third Party Plaintiff has filed a document entitled "Motion for Leave to File Amended Complaint." It does not respond to any of the grounds. It is a three page document, to which are attached about 50 various irrelevant documents. He makes the following statement in support of his motion for leave to amend:

> 4. Defendant did not file the Third Party Complaints under the Ninth Amendment aware that the action would be removed to the United States District Court for the Western District of Pennsylvania. Defendant did not draft the Third Party Ninth Amendment Complaint for the purpose of withstanding a Motion to Dismiss pursuant to FRCP 12(b).

An examination of the third party complaint reveals no cause of action for which relief can be granted. We find no basis for any individual cause of action under the Ninth Amendment. There are no individual constitutional rights secured by the Ninth Amendment. No other ground for relief is shown. Third Party Plaintiff's

prior filing in this United States District Court which attempted to plead violations of the Civil Rights Act, 42 U.S. 1981-1985, were all dismissed for failure to state a cause of action.

All defendants raise the issue of improper service of process. The docket record is bare of any proofs of service and Third Party Plaintiff has done nothing to cure this defect.

Claims against any federal employee, be it a judge or a United States Attorney, based upon conduct in performing official duties, raising common law claims, fail to state a cause of action because federal employees are immune from tort suits arising from discretionary acts performed within the scope of their duties. Although named in the caption of the Complaint, there is no recital in the body of the Complaint of any acts performed by Richard Thornburgh, or in what capacity he performed these acts.

Third Party Plaintiff names Judges Doyle and Narick of the Common Pleas Court and Judge Ziegler of this Court. These claims arise from adverse decisions of these judges in cases where Third Party Plaintiff was involved. The judges, both state and federal, are immune from lawsuits for actions taken in their judicial capacity.

Similarly, the United States Attorney and his assistants have prosecutorial immunity for acts done in the course of their official duties.

This action appears to be based on the same set of facts alleged in four prior actions in this court, Civil Action No. 86-1659; Civil Action No. 86-1956; Civil Action No. 86-2293 and Civil Action No. 87-490. All were dismissed for failure to plead a cause of action upon which relief can be granted in this court. The Third Party Defendants raise the defenses of res judicata and collateral estoppel, to which Third Party Plaintiff has made no response.

We find that the Third Party Plaintiff has failed to set forth a cause of action recognized under Federal law against any Third Party Defendant.

With respect to the private party defendants the complaint is defective if in any way it attempts to set forth civil rights violations. There are no facts that allege state action on their part.

We find the Third Party Complaint filed herein to be frivolous, harassing, vexatious and redundant, and it will be dismissed with prejudice as to all Third Party Defendants. We find no pendant jurisdiction to consider purely state law claims because "the federal claim must have substance sufficient to confer subject matter jurisdiction on the court." United Mine Workers v. Gibbs, 383 U.S. 715, 725. "Certainly if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claim should be dismissed as well."

Id. at p. 726. We will dismiss any state law claims pleaded in the third-party complaint.

Inasmuch as there are no viable federal jurisdictional questions left for this court, the third party complaint having been stricken, there remains only the original action set forth between plaintiff and defendant. We will direct that this action be remanded to the state court in which it was originally filed.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

JULIUS JONES

Plaintiff

vs.

JOHN GALIARDI,

Defendant and
Third Party Plaintiff

vs. Civil Action No. 88-2338

AMERICAN TELEPHONE & TELEGRAPH;
BELL OF PENNSYLVANIA;
AT & T TECHNOLOGIES;
REED, SMITH, SHAW & MCCLAY;
JUDGES ROBERT DOYLE & EMIL NARICK;
PUC; PA. DEPT. OF JUSTICE;
TITUS MARCUS & SHAPIRO;
DILWORTH, PAXON, KALISH & KAUFMANN;
JUDGE DONALD ZIEGLER;
MANSMANN, CINDERICH & TITUS;
DUQUESNE LIGHT COMPANY;
ALLEGHENY COUNTY SHERIFF'S DEPARTMENT;
RICHARD THORNBURGH

Third Party Defendants

O R D E R

NOW, this 23rd day of November, 1988, IT IS ORDERED that:

(1) The third party complaint filed in this action is stricken with prejudice.

(2) The third party complaint in this action is dismissed as to each Third Party Defendant named, with prejudice.

(3) Third Party Plaintiff's motion for leave to amend is DENIED.

(4) The action between Julius Jones, plaintiff, and John Gagliardi, defendant, is REMANDED to the Court of Common Pleas of Allegheny County, Pennsylvania, forthwith, and the Clerk shall send a certified copy of this Order to the Prothonotary of the Allegheny County Court of Common Pleas.

(5) This Court retains jurisdiction of the matter solely to determine the motion for sanctions filed by Third-Party Defendants.

ORDERED filed.

/s/ Gerald J. Weber
GERALD J. WEBER
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JULIUS JONES,)
PLAINTIFF
) CA NO 88-2338
VS
)
JOHN GAGLIARDI, ET AL, ETC,
DEFENDANTS

ORDER

November 8, 1988. The Motion is Denied. This Judge, as do all the Judges of this court, sits on cases, both civil and criminal, in which the United States Attorney appears to represent the interests of the United States. The Court has no personal relationship with any representative of the United States Attorney's office.

Judge Ziegler, a defendant in this action, is a member of this Court. This Judge has no personal relationship with the Judge which would interfere with his determination of an issue of law concerning Judge Ziegler's legal position

/s/ Gerald J. Weber